outset in that he made a statement to the Police on the first opportunity.

In this case there can be no doubt that Det. Sgt. Koh Sui had commenced to investigate the conduct of the accused in relation to his acts with the rubber, and having so commenced he should not have adduced, nor should the Court below have received, evidence of any statement alleged to have been made by the appellant.

The last ground of appeal complains of the finding being against the weight of evidence, because it disregarded that of Siow Thian Fatt and Lee Ngee. It is certainly arguable that the Magistrate refused the sworn testimony of Lee Ngee, but accepted the hearsay evidence of what she is alleged to have told Det. Sgt. Koh Sui.

Now this is an appeal from the Court of a Magistrate who is occupied with many other duties; he is not legally qualified, and like the many other Magistrates, who between them conduct the preponderance of judicial work in the country, he manifestly seeks to administer the law to the best of his ability.

It is the duty of this Court to afford guidance, but my principal concern is to ensure that every accused person has a fair trial conducted in accordance with the procedure laid down. The guilty should be punished while the innocent and those in whose favour a reasonable doubt is found should be acquitted. I am not disposed to sacrifice justice to technicality or irregularity.

In this case the note book, Ex. P. 1, is strong evidence. If the material witnesses, whose absence I have already observed, had testified as the Police witnesses suggest, then with adherence to the strict rules of evidence a *prima facie* case might have become apparent. I make no suggestion as to the finding; the defence might have been different and found to be conclusive; but I do not regard it justice to go no further with this case. If the appellant is innocent he is entitled to discharge, and it is always incumbent upon the prosecution to prove the case beyond reasonable doubt.

This appeal is allowed. The finding and fine imposed in the Court below is set aside, and retrial is ordered in the Court of the District Judge. The fine if paid is to be refunded.

Appeal Allowed.
Retrial Ordered.

PUBLIC PROSECUTOR v. R. BALASUBRAMANIAM.

[Orig. Cr. Juris. (Callow, J.) February 17, 1947]
[Pahang — Cr. Tr. No. 19 of 1947]

Penal Code, S. 477 — Falsification of Account Book — Proof of wilful intent to defraud.

In this case the accused was charged that he being servant to the Government of the State of Pahang wilfully with intent to defraud falsified a certain book to wit a Hospital Book by omitting to enter 82 bed sheets in such book belonging to the said Government of the State of Pahang. He was tried before a Judge sitting alone. At the end of the case for the prosecution the learned Counsel for Defence submitted that no case had been made out against the accused which unrebutted would warrant a conviction, and that therefore he sought an acquittal. The learned Counsel for the Crown submitted that a **prima facia** case had been made out and that there was a case, although it might be answerable.

Held, (a) that the fact that a book is incorrect, ill-kept or misleading is not enough in itself to point irresistibly to wilful fraud; there must be conscious determination to defraud as distinguished from ignorant incompetency, and (b) that at the close of the case for the prosecution the Court must consider, even if a **prima facie** case is shown, whether all element of doubt is sufficiently removed to sustain a conviction if no more evidence is adduced.

Case referred to :—

(1) *Public Prosecutor v. Lim Teong Seng and two others* (1946) M.L.J. 108.

MAGISTRATE'S APPEAL.

B. G. Shields, Deputy Public Prosecutor for the Public Prosecutor.

Mark Morrison for the Appellant.

Callow, J. : —The accused was arraigned on three charges each contrary to section 477A of the Penal Code.

After argument, which I do not need to recapitulate, the 2nd and 3rd charges were withdrawn leaving the following :—

> "That you, between the 1st day of January, 1946, and the 31st day of December, 1946, being a servant of the Government of the State of Pahang wilfully with intent to defraud falsified a certain book to wit a Hospital Book by omitting to enter 82 Bed Sheets in such book which belonged to the said Government of the State of Pahang and thereby committed an offence punishable under section 477A of the Penal Code."

At the close of the case for the prosecution, Mr. Morrison for the accused submitted that no case had been made out against the accused which unrebutted would warrant a conviction, and that therefore he sought an acquittal.

I heard the learned Counsel for the Crown in reply and adjourned to take time to consider the argument, the evidence and the law. In coming to a

decision I have been guided by the principles set out in the case of the *Public Prosecutor v. Lim Teong Seng and two others*[1].

The case for the prosecution is that the accused was in charge of the equipment in the Mentakab Hospital, and as such had a duty to keep the book Exhibit P. 5. S. I. Vouchers (Ex. P. 2) during 1946 showed receipt by the accused of 290 bedsheets. The book P. 5 accounts for 208, leaving a deficiency of 82.

I find the learned Counsel for the Crown's interpretation of section 477A of the Penal Code correct when he referred to the wide terms of the "explanation" concluding the section, but although it vests general powers to prosecute for deficiencies, it must be read and considered in conjunction with the "object" expounded on page 1159 of *Ratanlal*, 16th Edition. It is not intended to be invoked, as Mr. Morrison pointed out, for *any* error in *any* book. It really returns to the fundamental principle of requiring proof of "wilfully with intent to defraud".

In this case, as I examine the book P. 5, I am able to construe and infer from the figures that the accused did receive 290 bedsheets and only accounted for 204. Mr. Morrison urged another construction, but even accepting the prosecution figures I must, sitting as Judge and Jury, go further and direct my attention to intent, remembering at the same time to give the accused the benefit of reasonable doubt.

The learned Counsel for the Crown said a *prima facie* case had been made out. He said there is a case, although it may be answerable. I must go further and consider whether even if a *prima facie* case is shown, such element of doubt is removed so as to sustain a conviction if no more evidence is adduced. The *onus* is on the prosecution to prove the case and this burden never shifts. In *Public Prosecutor v. Lim Teong Seng and two others*[1] :—

> If therefore at the close of the prosecution he (namely, the Judge) as a jury comes to the conclusion, not that there is no evidence, but that the evidence produced is not strong enough to warrant a conviction, and only evidence beyond all reasonable doubt is of that nature, he is not by the spirit of English law entitled to say: 'I am doubtful of this evidence but let us see if it can be supplemented and improved by what can be elicited from the defence'. The prosecution who have to prove their case beyond all reasonable doubt have produced all the evidence they have, and it is on this evidence the conviction if any must rest, even if accused calls evidence. What the prosecution can elicit for its view from them is either supplementary or redundant, or goes to lessen the credibility of the defence evidence. It cannot be the basis of a conviction. If therefore at the close of the prosecution the Court is of opinion that on that evidence it cannot, as a jury, hold the allegations proved beyond all reasonable doubt, there is nothing left for it to do but to acquit the accused.

My first regard is for the book P. 5 in which the omission is alleged. The prosecution describe this book as an "equipment book". Before me is a mutilated book in which the word "equipment" cannot be found; each page is headed "Hospital .... for ....year ending.....19..." and at the top right hand corner is in brackets "(MDL 38)". For 1942, 1943 and 1944 it contains an annual statement; there are no entries for 1945, and those headed 1.1.46 concern this case. The prosecution submit that the purport of this book is to record, *inter alia*, under the heading "received since" all issues on receipt. In point of fact there is no room for a number of receipt entries, and clearly the book is not made for this. Mr. Morrison argued that the book P. 5 is an inventory of all hospital stores, made out so as to provide a periodical return showing the state of affairs in respect of every article in use. He elicited from the dresser S. Kandiah, who was in charge of the equipment prior to the accused, that the stores enumerated on Exhibits D 3 and D 4 had been received by him and omitted from the book P. 5.

Should I have reasonable doubt as to the purpose of the Book P. 5. It *looks* like an annual inventory, more than a current record of receipts and issues. If it is a return do the figures show an omission as charged?

I should here refer to the changes of staff that have occurred since the re-occupation. The first Medical Officer in charge was Dr. Silvanagam and he remained until the Spring of 1947 when Dr. Wilson assumed temporary duty. On the 27th of May 1947 the second prosecution witness Dr. Sabaratnam took over and is still in charge.

There was no evidence as to how Dr. Wilson relieved Dr. Silvanagam and there is nothing in the book Exhibit P. 5 to indicate any check on taking over at any time. Dr. Sabaratnam said his relief of Dr. Wilson was done hurriedly, and it was not until some weeks later he was able to go into the stores and ascertain what was on hand. It was at this time there was an altercation between the Doctor and the accused's wife. In cross-examination Dr. Sabaratnam described it as a coincidence that certain angry correspondence occurred with the accused's wife while the discrepancies in stores were being investigated. The suggestion by the defence in cross-examination was that this variance between the families resulted in

the check and charge of fraud. This the Doctor denied, but it is certainly a fact that the irregularities alleged in P. 5 were brought to notice by Dr. Sabaratnam at the same time as a serious difference had arisen between him and the accused's wife. If these discrepancies and deficiencies were of some standing they escaped the notice of Doctors Silvanagam and Wilson.

Now as to the state of affairs in Mentakab Hospital in 1946, the duties of the accused, the system of work, the keeping of records, the rendering of returns and the general conduct of the institution, who could give better evidence than Dr. Silvanagam who was the Medical Officer in charge during the whole of the relevant period? I understand he is available, but not called. Mr. Morrison submitted, and I agree, that he is a material witness; and learned Counsel for the accused went further and argued that it should be presumed that his testimony would be adverse to the prosecution for he could and should have been called as a Crown witness. It certainly makes it difficult for me to apprehend fully the practices and procedure operative in Mentakab Hospital in 1946 when evidenced by Dr. Sabaratnam who did not arrive there until the middle of 1947. I am in some doubt now as to the proper system. I understand the S. I. vouchers but if Ex. P. 5 is made up annually as it may well be from its appearance, there should be some ledger kept for intermediate and current entries of stores received and issued. Again, why should not the Store Keeper issue direct to wards, and each ward have its own inventory? The accused was one of a number of dressers each or several having additional duties, and his was a general charge of equipment. There was no evidence to suggest that he had any store; the equipment seems to have passed through him from the Store Keeper to the Wards.

To return more closely to the points at issue, is the evidence sufficient to prove the accused is a knave, or does it go no further than demonstrate inefficiency and incompetency? I have not heard the accused give evidence, but scrutiny of the book P. 5 demonstrates clearly that the accused is quite incapable of keeping a book or rendering a return — whichever way Ex. P. 5 is regarded. The alterations extant are in no way explained by his statement Ex. P. 14.

If the book P. 5 is a sort of ledger or stock book how do the entries 50 + 75 + 75 appear in column one on page 14? No figures for 1945 are contained in the book, but Exhibits D 4 and D 5 show that issues were made on the 6th of November 1945. It seems that S. Kandiah (4 P.W.) was then in charge of equipment and he kept the book P. 5 during the Japanese occupation. It was then a book which Kandiah used to set out the articles in the hospital when commanded so to do by the Japanese. When the succeeding states were set out any differences were written off as unserviceable. Kandiah handed over to the accused, but there is no record of any handing or taking over in Ex. P. 5; it had had no entry in it for months previous. How can such a book be regarded? The accused said (Ex. P. 14) that he obtained the book P. 5 just for reference, he had sought unsuccessfully for some months to obtain a proper book, and this was confirmed by the Chief Clerk Visvalingam (5 P.W.); and the book P. 6 which purports to succeed P. 5, albeit it is dated 1st January, 1947 when it was not requisitioned until 31st January, 1947, is an ordinary exercise book. The first entries in this book P. 6 should correspond with the balances shown at the end of P. 5, but they do not in every case. Mr. Morrison drew my attention to the Remarks Column on page 14 and invited me to hold that the items dated "18/2 and 20/4" related to 1947 and so accounted for the balance of 140 brought forward in Ex. P. 6. On the contrary Mr. Shields invited me to subtract these items and so account for the bedsheets shown on pages 18 and 20 in the Female and Maternity Wards. Which should be accepted? Is either proved beyond reasonable doubt?

Then there were issues for "sewing", and these sheets would presumably go direct to those working on and with them, an instance of this 50 bedsheets on 28.4.47. There is no direct and single omission to enter the 82 sheets subject of the charge. I am asked to hold that the evidence shows a general deficiency of that number which the accused wilfully and fraudulently omitted to insert in the book P. 5 either in one or a number of entries.

For convenience I compiled the figures relating to bedsheets. As I have said the figures can show a shortage of 82 sheets in 1946. Fifteen bedsheets were issued on the 28th of December, 1945 — the only prior known issue, though there must have been some during the British Military Administration to obtain the total of 200 shown as "remaining on" 1st January, 1946; the evidence is that there was none on re-occupation. Including these 15 bedsheets issued on 28th December, 1945, the total issues to 31st December, 1946, are 305; taking the figures shown as "remaining on" 1st January, 1947 (Ex. P. 6) the difference is 91, and

none of these sheets with a life of 12 months is written off as unserviceable — there must have been some.

Again, according to my calculations the accused started 1946 with 84 bedsheets unaccounted for, and his figures carried forward to 1947 are inaccurate. I agree that the S. I. vouchers (Ex. P. 2) show 290 bedsheets issued in 1946, but to arrive at the deficiency of 82 asserted by the prosecution manipulation of the various columns is necessary, for instance while the 200 under Admission Ward stands, reference to the remarks column cause the 50 under Female Ward and the 16 under Maternity Ward not to stand as separate receipts; and from where come the 8 shown as a plus to the 16 under Maternity Ward? It is all very puzzling; Dr. Sabaratnam reported a deficiency of 128 bedsheets; does it suggest muddle, confusion and inefficiency, or is fraud conclusively proved?

Against the accused is his conduct when Dr. Sabaratnam inquired into stores and equipment. The Doctor's evidence is that the accused said his book was lost, and so were his copies of S. I. vouchers, although the originals were easily attainable. This unhelpful attitude, and the condition of the book P. 5 is the evidence on which I am asked to infer intent to defraud. There was no evidence suggesting disposal of purloined bedsheets, or that he made away dishonestly with any, or indeed that he derived any advantage from his duties or the neglect thereof.

The production of the bank accounts of the accused rather strengthen the defence; they show neither poverty which might be conducive to fraud, nor large entries which might be consequent upon illegal gain by sale or disposal of hospital property.

Undoubtedly patients have absconded but there was no evidence other than the accused's statement (Ex. P. 14) that bed linen had been stolen by such patients. On the other hand if the entries on page 14 of P. 5 can be accepted at all it would appear that 200 bedsheets "remained on" hand at the beginning of the year (where they came from is obscure as I have remarked), and although the life of a bedsheet is but 12 months not one of these sheets succumbed during the ensuing year.

As regards the precise nature of the omission it seems that it could have been cured by the entry of 82 more lost or written off unserviceable. The accused made a terrible mess of the bedsheet entries and if it had been shown that he had done this after Dr. Sabaratnam's investigation had commenced an intent to defraud would be a reasonable inference.

But does the evidence for the prosecution point irresistibly to wilful fraud? The fact that this book is incorrect, ill-kept or misleading is not enough; there must be conscious determination to defraud as distinguished from ignorant incompetency (5th Edition *Gour* p. 1615). It is a question of fact for me to decide on the evidence before me; I am unable to allow the prosecution to attempt to supplement, improve or confirm what may be now a possible though doubtful case by whatever can be elicited from the defence. The Crown case rests at the close of the prosecution.

I find that the appearance of the book P. 5 together with the evidence which I have heard incline me to the view that it was used to compile a return showing the state of affairs with regard to the equipment in the hospital, rather than a current stock book showing receipts and issues as alleged by the prosecution. Apart from the numerous alterations, the entries look as if made at one time, as for a return. There is nothing in it to suggest any handing or taking over or any check. That would not excuse the accused if it were shown beyond reasonable doubt that he had made fraudulent omissions to his own benefit (16th Ed. *Ratanlal* p. 57).

Lack of supervision and check in the Mentakab Hospital has been shown; incompetency and inefficiency by the accused is apparent, but on the evidence before me I cannot be sure whether the accused in 1946 deliberately falsified the book P. 5, or simply muddled it. Did he then later try and adjust his figures, and even so failed in arithmetic? Had there been any evidence of *mala fide* dealings with the bedsheets the case would have assumed a different aspect. I am by no means convinced of the innocence of the accused, of which he might have satisfied me had he elected to continue, but I do not find a case by the prosecution which if unrebutted would warrant a conviction, and I am bound in law to acquit the accused of the charge. As regards the other two counts I enter a discharge not amounting to an acquittal.

Appeal Allowed.